IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 867 OF 2004

1. Nirlon Limited & Anr.] .. Petitioners

Versus

1. Municipal Corporation of Brihan--mumbai & 3 ors.] .. Respondents

Mr. E.P. Bharucha, senior counsel i/b M/s. Matubhai Jamietram for the petitioners.

Ms. T.H. Puranik for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 22ND MARCH, 2006

P.C. :

. Petitioners had challenged, amongst others, the constitutional validity of Section 217(2)(d) and Section 217(5) of Mumbai Municipal Corporation Act, 1888. Whilst admitting the Petition, an interim order came to be passed on 23rd February, 2004, whereby the petitioners were directed to pay a sum set out therein. If the amount set out therein was paid, the petitioners Appeal was to be heard and disposed of. The petitioners have deposited the amounts and the Appeal has not been taken up for hearing. Considering that ;the petitioner

has proceeded with his alternative remedy, in our opinion, this would not be a fit case to consider the challenge to the constitutional validity of the Sections and that challenge can be considered in an appropriate Petition.

2. It is made clear that the Appeal would be heard in terms of the direction to deposit as set out in the interim order and the petitioners are not liable to deposit any further amount for the purpose of hearing of the Appeal.

3. With the above observations, Rule stands discharged. There shall be no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]